***Bob Jones University v. United States***

 461 U.S. 574 (1983)

[Edited version of the case from Epstein and Walker, *Constitutional Law for a Changing America*, on-line case archive.]

[Introduction from Epstein and Walker:] In 1970, after a federal court issued an injunction to prohibit the Internal Revenue Service (IRS) from giving tax-exempt status to private schools engaged in racial discrimination, the IRS adopted the court’s decision as a formal policy. As a result of this regulation (and other litigation) the IRS formally began to take away tax-exempt status from a number of schools. Among those affected was Bob Jones University. Founded in Florida in 1927 and relocated to Greenville, South Carolina, in 1940, the university had more than five thousand students ranging from kindergarten through graduate school when the IRS revoked its status in 1976.

Although it was not affiliated with any denomination, Bob Jones was “dedicated to the teaching and propagation of its fundamentalist Christian beliefs.” This included strong prohibitions against interracial dating and marriage. To enforce this particular tenet, the school excluded African Americans until 1971, when it began accepting applications from married blacks only. The school began to admit unmarried blacks after litigation in 1976, but only if they adhered to a strict set of rules; for example, interracial dating and marriage would lead to expulsion. The school continued to deny admission to individuals in interracial marriages.

Based on its belief that the university’s policies amounted to racism, the IRS revoked its tax-exempt status. The school challenged the decision on several grounds, claiming that the IRS action punished the practice of religious beliefs. A district judge agreed that the IRS had abridged the university’s religious liberty, but after a court of appeals reversed, Bob Jones appealed to the U.S. Supreme Court. The justices addressed the following question: Is the government’s interest in prohibiting racial discrimination sufficiently compelling to abridge free exercise guarantees? Along with the Bob Jones case, the Court also decided *Goldsboro Christian Schools, Inc. v. United States*, an appeal presenting a similar attack on the statutory interpretations of the IRS.

chief justice burger delivered the opinion of the Court.

We granted certiorari to decide whether petitioners, nonprofit private schools that prescribe and enforce racially discriminatory admissions standards on the basis of religious doctrine, qualify as tax-exempt organizations under 501(c) (3) of the Internal Revenue Code of 1954….

When the Government grants exemptions or allows deductions all taxpayers are affected; the very fact of the exemption or deduction for the donor means that other taxpayers can be said to be indirect and vicarious "donors." Charitable exemptions are justified on the basis that the exempt entity confers a public benefit--a benefit which the society or the community may not itself choose or be able to provide, or which supplements and advances the work of public institutions already supported by tax revenues. History buttresseslogic to make clear that, to warrant exemption under 501(c)(3), an institution must fall within a category specified in that section and must demonstrably serve and be in harmony with the public interest. The institution's purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred.

We are bound to approach these questions with full awareness that determinations of public benefit and public policy are sensitive matters with serious implications for the institutions affected; a declaration that a given institution is not "charitable" should be made only where there can be no doubt that the activity involved is contrary to a fundamental public policy. But there can no longer be any doubt that racial discrimination in education violates deeply and widely accepted views of elementary justice. Prior to 1954, public education in many places still was conducted under the pall of *Plessy v. Ferguson* (1896); racial segregation in primary and secondary education prevailed in many parts of the country…. This Court's decision in *Brown v. Board of Education* (1954), signalled an end to that era. Over the past quarter of a century, every pronouncement of this Court and myriad Acts of Congress and Executive Orders attest a firm national policy to prohibit racial segregation and discrimination in public education.

An unbroken line of cases following *Brown v. Board of Education* establishes beyond doubt this Court's view that racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals….

Few social or political issues in our history have been more vigorously debated and more extensively ventilated than the issue of racial discrimination, particularly in education. Given the stress and anguish of the history of efforts to escape from the shackles of the "separate but equal" doctrine of *Plessy v. Ferguson* (1896), it cannot be said that educational institutions that, for whatever reasons, practice racial discrimination, are institutions exercising "beneficial and stabilizing influences in community life," *Walz v. Tax Comm'n* (1970), or should be encouraged by having all taxpayers share in their support by way of special tax status.

There can thus be no question that the interpretation of 170 and 501(c)(3) announced by the IRS in 1970 was correct. That it may be seen as belated does not undermine its soundness. It would be wholly incompatible with the concepts underlying tax exemption to grant the benefit of tax-exempt status to racially discriminatory educational entities, which "exer[t] a pervasive influence on the entire educational process." *Norwood v. Harrison* [1973]. Whatever may be the rationale for such private schools' policies, and however sincere the rationale may be, racial discrimination in education is contrary to public policy. Racially discriminatory educational institutions cannot be viewed as conferring a public benefit within the "charitable" concept discussed earlieror within the congressional intent underlying 170 and 501(c)(3)….

Petitioners contend that, even if the Commissioner's policy is valid as to nonreligious private schools, that policy cannot constitutionally be applied to schools that engage in racial discrimination on the basis of sincerely held religious beliefs. As to such schools, it is argued that the IRS construction of 170 and 501(c)(3) violates their free exercise rights under the Religion Clauses of the First Amendment. This contention presents claims not heretofore considered by this Court in precisely this context.

This Court has long held the Free Exercise Clause of the First Amendment to be an absolute prohibition against governmental regulation of religious beliefs, *Wisconsin v. Yoder* (1972); *Sherbert v. Verner* (1963); *Cantwell v. Connecticut* (1940). As interpreted by this Court, moreover, the Free Exercise Clause provides substantial protection for lawful conduct grounded in religious belief, see *Wisconsin v. Yoder* [1972]; *Thomas v. Review Board of Indiana Employment Security Div.* (1981); *Sherbert v. Verner* [1963]. However, "[n]ot all burdens on religion are unconstitutional.... The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest." *United States v. Lee* (1982)….

On occasion this Court has found certain governmental interests so compelling as to allow even regulations prohibiting religiously based conduct. In *Prince v. Massachusetts* (1944), for example, the Court held that neutrally cast child labor laws prohibiting sale of printed materials on public streets could be applied to prohibit children from dispensing religious literature. The Court found no constitutional infirmity in "excluding [Jehovah's Witness children] from doing there what no other children may do." See also *Reynolds v. United States* (1879); *United States v. Lee* [1982]; *Gillette v. United States* [1971]. Denial of tax benefits will inevitably have a substantial impact on the operation of private religious schools, but will not prevent those schools from observing their religious tenets.

The governmental interest at stake here is compelling…. [T]he Government has a fundamental, overriding interest in eradicating racial discrimination in education--discrimination that prevailed, with official approval, for the first 165 years of this Nation's constitutional history. That governmental interest substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs. The interests asserted by petitioners cannot be accommodated with that compelling governmental interest, and no "less restrictive means," are available to achieve the governmental interest….

The judgments of the Court of Appeals are, accordingly,

*Affirmed.*

justice powell, concurring in part and concurring in the judgment.

I join the Court's judgment … holding that the denial of tax exemptions to petitioners does not violate the First Amendment. I write separately because I am troubled by the broader implications of the Court's opinion with respect to the authority of the Internal Revenue Service (IRS) and its construction … of the Internal Revenue Code….

I cannot say that this construction of the Code, adopted by the IRS in 1970 and upheld by the Court of Appeals below, is without logical support. The statutory terms are not self-defining, and it is plausible that in some instances an organization seeking a tax exemption might act in a manner so clearly contrary to the purposes of our laws that it could not be deemed to serve the enumerated statutory purposes. And, as the Court notes, if any national policy is sufficiently fundamental to constitute such an overriding limitation on the availability of tax-exempt status under 501(c)(3), it is the policy against racial discrimination in education. Finally, and of critical importance for me, the subsequent actions of Congress present "an unusually strong case of legislative acquiescence in and ratification by implication of the [IRS's] 1970 and 1971 rulings" with respect to racially discriminatory schools. Ante, at 599. In particular, Congress' enactment of 501(i) in 1976 is strong evidence of agreement with these particular IRS rulings.

I therefore concur in the Court's judgment that tax-exempt status under 170(c) and 501(c)(3) is not available to private schools that concededly are racially discriminatory. I do not agree, however, with the Court's more general explanation of the justifications for the tax exemptions provided to charitable organizations….

With all respect, I am unconvinced that the critical question in determining tax-exempt status is whether an individual organization provides a clear "public benefit" as defined by the Court. Over 106,000 organizations filed 501(c)(3) returns in 1981…. I find it impossible to believe that all or even most of those organizations could prove that they "demonstrably serve and [are] in harmony with the public interest" or that they are "beneficial and stabilizing influences in community life." Nor am I prepared to say that petitioners, because of their racially discriminatory policies, necessarily contribute nothing of benefit to the community. It is clear from the substantially secular character of the curricula and degrees offered that petitioners provide educational benefits.

Even more troubling to me is the element of conformity that appears to inform the Court's analysis. The Court asserts that an exempt organization must "demonstrably serve and be in harmony with the public interest," must have a purpose that comports with "the common community conscience," and must not act in a manner "affirmatively at odds with [the] declared position of the whole Government." Taken together, these passages suggest that the primary function of a tax-exempt organization is to act on behalf of the Government in carrying out governmentally approved policies. In my opinion, such a view of 501(c)(3) ignores the important role played by tax exemptions in encouraging diverse, indeed often sharply conflicting, activities and viewpoints…. Far from representing an effort to reinforce any perceived "common community conscience," the provision of tax exemptions to nonprofit groups is one indispensable means of limiting the influence of governmental orthodoxy on important areas of community life….

I would emphasize, however, that the balancing of these substantial interests is for Congress to perform. I am unwilling to join any suggestion that the Internal Revenue Service is invested with authority to decide which public policies are sufficiently "fundamental" to require denial of tax exemptions. Its business is to administer laws designed to produce revenue for the Government, not to promote "public policy.”…

The Court's decision upholds IRS Revenue Ruling 71-447, and thus resolves the question whether tax-exempt status is available to private schools that openly maintain racially discriminatory admissions policies. There no longer is any justification for Congress to hesitate--as it apparently has--in articulating and codifying its desired policy as to tax exemptions for discriminatory organizations. Many questions remain, such as whether organizations that violate other policies should receive tax-exempt status under 501(c)(3). These should be legislative policy choices. It is not appropriate to leave the IRS "on the cutting edge of developing national policy." The contours of public policy should be determined by Congress, not by judges or the IRS.

justice rehnquist, dissenting.

The Court points out that there is a strong national policy in this country against racial discrimination. To the extent that the Court states that Congress in furtherance of this policy could deny tax-exempt status to educational institutions that promote racial discrimination, I readily agree. But, unlike the Court, I am convinced that Congress simply has failed to take this action and, as this Court has said over and over again, regardless of our view on the propriety of Congress' failure to legislate we are not constitutionally empowered to act for it….

This Court continuously has been hesitant to find ratification through inaction…. This is especially true where such a finding "would result in a construction of the statute which not only is at odds with the language of the section in question and the pattern of the statute taken as a whole, but also is extremely far reaching in terms of the virtually untrammeled and unreviewable power it would vest in a regulatory agency." *SEC v. Sloan*(1978). Few cases would call for more caution in finding ratification by acquiescence than the present ones. The new IRS interpretation is not only far less than a longstanding administrative policy, it is at odds with a position maintained by the IRS, and unquestioned by Congress, for several decades prior to 1970. The interpretation is unsupported by the statutory language, it is unsupported by legislative history, the interpretation has led to considerable controversy in and out of Congress, and the interpretation gives to the IRS a broad power which until now Congress had kept for itself. Where in addition to these circumstances Congress has shown time and time again that it is ready to enact positive legislation to change the Tax Code when it desires, this Court has no business finding that Congress has adopted the new IRS position by failing to enact legislation to reverse it.

I have no disagreement with the Court's finding that there is a strong national policy in this country opposed to racial discrimination. I agree with the Court that Congress has the power to further this policy by denying 501(c)(3) status to organizations that practice racial discrimination. But as of yet Congress has failed to do so. Whatever the reasons for the failure, this Court should not legislate for Congress.

Petitioners are each organized for the "instruction or training of the individual for the purpose of improving or developing his capabilities" and thus are organized for "educational purposes" within the meaning of 501(c)(3). Petitioners' nonprofit status is uncontested. There is no indication that either petitioner has been involved in lobbying activities or political campaigns. Therefore, it is my view that unless and until Congress affirmatively amends 501(c)(3) to require more, the IRS is without authority to deny petitioners 501(c)(3) status. For this reason, I would reverse the Court of Appeals.